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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Group Art Unit : PATENT APPLICATION
Examiner Ashokkumar B. Patel :
In re application of :
RALF NEUHAUS ET AL. : COMMUNICATION NETWORK
Serial No. 10/520,681 : COMPRISING COMMUNICATION
Filed January 7, 2005 : COMPONENTS HAVING CLIENT AND
: SERVER FUNCTIONALITIES AND
Confirmation No. 5198 : SEARCH FUNCTIONS

**RENEWED PETITION UNDER
37 C.F.R. 1.137(a) OR
ALTERNATIVELY 37 C.F.R. 1.137(b)**

Pittsburgh, Pennsylvania 15219

April 24, 2009

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

On February 24, 2009 the Office issued a decision denying Applicants' petition to revive the above-identified application saying that the evidence submitted in support of the petition did not establish that the delay was unavoidable. Applicants request reconsideration of that decision in light of the comments below. In the event that the Office continues to believe that the Applicants have not made a showing that the abandonment was unavoidable, Applicants request

the Office to treat the Petition as having been filed under 37 C.F.R. 1.137(b) which provides for revival in the event the abandonment was unintentional. Should the Office determine that the abandonment was unintentional rather than unavoidable, the Office is authorized to charge Deposit Account No. 02-4800 for the difference in the petition fees and any other required fees. That difference is understood to be \$1,080.00.

The decision states that the showing required under 37 C.F.R. 1.137(a) was not met because Petitioner has not provided a statement from a practitioner to the effect that the Office Action was not received at the correspondence address. Rather that statement was provided by a legal assistant. However, the petition was signed by Janet B. Hood, Registration No. 61,142. Ms. Hood also signed a response under 37 C.F.R. 1.111 providing the statement of legal assistant Tracey A. Daniel. Petitioner submits that the signature of the practitioner on both the petition and the response identifying the statement from Tracey A. Daniel should be sufficient to meet the requirements of 37 C.F.R. 1.137(a). The courts have often said that "the determination of unavoidability is to be decided on a case by case basis, taking all of the facts and circumstances into account. Smith v. Mossinghoff, 671 F.2d 533, 538 (D.C. Cir. 1982); Haines v. Quigg, 673 F. Supp. 314, 317 (N.D. Ind. 1987)." It would be fair to conclude from the evidence submitted that under the circumstances here the abandonment was unavoidable.

Page 6 of the decision makes a statement that delay resulting from a lack of knowledge or improper application of the patent statute, rules of practice or the MPEP does not constitute an unavoidable delay. While that statement may be true, the conclusion does not apply to the facts presented here. Here the delay resulted from the non-receipt of an office action from the Office. Adequate evidence has been presented to demonstrate that a docket system was in place for

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receiving and docketing such responses and the people who receive these communications had not seen it.

Petitioner again submits that the facts submitted do establish a case of unavoidable delay. Reconsideration and approval of the petition are respectfully requested.

In the event that upon reconsideration the Office continues to believe that the delay was unintentional rather than unavoidable, the Office is asked to treat the previously filed petition as a petition under 37 C.F.R. 1.137(b) and revive the application on that basis. Authorization is here provided to charge any difference in fees to Deposit Account No. 02-4800.

Respectfully submitted,



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